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c 59 Certification of Titles Act

Ontario

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CHAPTER 59

The Certification of Titles Act

1. In this Act,

- (a) "Director of Land Registration" means the Director of Land Registration appointed under *The Registry Act*; Interpretation
R.S.O. 1970,
c. 409
- (b) "Director of Titles" means the Director of Titles appointed under *The Land Titles Act*. 1970, c. 37, s. 1, *part.* R.S.O. 1970,
c. 234

2. The Minister of Justice and Attorney General is responsible for the administration of this Act. 1970, c. 37, s. 1, *part.* Administration of Act

3.—(1) The Minister of Justice and Attorney General may designate one or more barristers or solicitors as title examiners to whom the Director of Titles may refer applications under this Act for investigation and report. Title examiners

(2) The Director of Titles may pay to a title examiner such portion of the fees received in respect of an application referred to such examiner as may be authorized by the Minister of Justice and Attorney General. 1961-62, c. 13, s. 1, *amended.* Compensation

4. The Director of Titles has and may exercise in connection with his functions under this Act all of the powers that may be conferred upon a commissioner under *The Public Inquiries Act*. R.S.O. 1960, c. 48, s. 3. Powers of director
R.S.O. 1970,
c. 379

5. The Director of Titles shall have a seal of office in such form as the Lieutenant Governor in Council approves. R.S.O. 1960, c. 48, s. 4. Seal

6. This Act does not apply to land registered under *The Land Titles Act*. R.S.O. 1960, c. 48, s. 5. Where Act not to apply

7.—(1) An owner of or any person claiming an estate in fee simple in land to which this Act applies, whether or not the land is encumbered, may apply to the Director of Titles to have the title to the land investigated and certified under this Act. R.S.O. 1960, c. 48, s. 6 (1). Application for certification

Supporting
material

(2) An application under subsection 1 shall be accompanied by the prescribed deposit and shall be supported by,

- (a) a statement under oath of the applicant,
 - (i) that to the best of his knowledge and belief he is the owner of the estate or interest claimed, subject only to the encumbrances, easements and encroachments set forth in the application, or that there are no encumbrances, easements or encroachments affecting the land, as the case may be, and that he is not aware of the existence of any other claim adverse to or inconsistent with his own to any part of the land or to any interest therein, or that he is aware of such an adverse claim, in which case he shall set forth every such adverse claim and the particulars thereof,
 - (ii) where a person other than the applicant is in possession of the land, setting forth under what claim, right or title such person is in possession, and
 - (iii) setting forth such other facts as in his opinion may be of assistance to the Director of Titles in ascertaining the validity of his title;
- (b) a plan of survey of the land prepared by an Ontario land surveyor;
- (c) a statement under oath by the Ontario land surveyor who prepared the plan of survey, verifying the description of the land, identifying it with the plan of survey, stating the names of the persons in actual occupation of the land or any part thereof, describing the nature of the buildings on the land, and stating the nature and identifying any easements or encroachments apparent on his examination of the surface of the land or of which he has knowledge;
- (d) the title documents, if any, of the land and any other evidences of title available to the applicant;
- (e) an abstract of the title to the land, certified by the registrar of the registry division in which the land is situate, showing a good and sufficient forty-year chain of title immediately preceding the date of the application;
- (f) a typewritten abstract of the title to the land prepared in accordance with good conveyancing practice by a solicitor together with the certificate of such solicitor that he has investigated the title and believes the applicant to be the owner of the estate that he claims in the land subject only to any encumbrance set forth in the application and that he has conferred with the

applicant on the matters set forth in the statement mentioned in clause *a* and that he believes the statement to be true;

- (g) a certificate of the sheriff of the county or district in which the land is situate showing that there are no writs of execution or extent or liens in his hands against any person having an interest in the land as ascertained by the applicant from the registrar's abstract and the investigation of the title and showing that he has not sold any land under any writ against such person within the six months next preceding the date of the certificate;
- (h) a certificate of the treasurer of the municipality in which the land is situate that all municipal taxes for which the land is liable, except those for the then current year, have been paid in full;
- (i) a certificate of the Registrar in Bankruptcy of the Supreme Court of Ontario that the name of the applicant does not appear in the index book kept pursuant to section 167 of the *Bankruptcy Act* (Canada);
- (j) a statement of the Minister of Revenue that he does not claim a lien for taxes payable under the *The Corporations Tax Act* or a predecessor thereof by any corporation that appears to have had any interest in the land before the date of the filing of the application;
- (k) evidence of the consent of the Minister of Revenue to the transfer of an interest in land consequent upon the death of a person on or after the 1st day of January, 1930, where such person appears from the solicitor's abstract mentioned in clause *f* to have had an interest in the land. R.S.O. 1960, c. 48, s. 6 (2), *amended*.

R.S.C. 1952,
c. 14

R.S.O. 1970,
c. 91

(3) The Director of Titles may at any time require an applicant to furnish such additional or other information or material as he specifies. R.S.O. 1960, c. 48, s. 6 (3).

Further
material

3.—(1) Upon the filing of an application, the Director of Titles shall cause notice thereof,

Notice of
application

- (a) to be registered in the registry office of the registry division in which the land is situate; and
- (b) to be
 - (i) published in a newspaper having general circulation in the locality in which the land is situate, or
 - (ii) served on owners and mortgagees of land adjoining the land of the applicant; and
- (c) to be given in such other manner, if any, as he considers proper. R.S.O. 1960, c. 48, s. 7, *revised*.

Sufficiency
of service

(2) A notice to be served under subclause ii of clause *b* of subsection 1 is sufficiently served if it is sent by registered mail addressed to the owner, mortgagee or chargee, or his assignee, as the case may be, of the land adjoining the land of the applicant at the address furnished under section 185 of *The Land Titles Act* or section 37 of *The Registry Act* or, where no such address has been furnished, addressed to the solicitor whose name appears on the conveyance, mortgage or charge, or assignment thereof, under which the owner, mortgagee or chargee, or his assignee, appears to have an interest in such adjoining land. 1961-62, c. 13, s. 2.

R.S.O. 1970,
cc. 234, 409

Registrar
to deliver
required
instruments
to director

9.—(1) The Director of Titles may request the registrar of deeds for the registry division in which the land described in an application is situate to deliver any instrument appearing on the abstract or required in connection with an application under this Act that the Director of Titles desires to examine, and the registrar, upon payment of his proper fees, shall comply with the request.

Manner of
delivery

(2) Where instruments are requested under subsection 1, they shall be delivered to the Director of Titles by registered mail.

Manner of
return

(3) The Director of Titles shall return the instruments as soon as practicable by registered mail.

Registrar's
disburse-
ments

(4) The Director of Titles shall reimburse the registrar for all postage paid by the registrar in complying with this section. 1961-62, c. 13, s. 3, *part*.

Inspection
of registry
office
records

10. The Director of Titles or a member of the staff of his office may inspect any abstract index or registered instrument or other paper in a registry office in connection with an application under this Act without payment of a fee therefor. 1961-62, c. 13, s. 3, *part*.

Adverse
claim

11.—(1) Any person having an adverse claim or a claim inconsistent with the claim set out in an application may file a statement under oath of his claim with the Director of Titles at any time before the certificate of title is executed.

Idem

(2) Where a claim adverse to or inconsistent with the claim set out in an application is filed, the Director of Titles may dispose of the issue or he may refer the matter to a judge of the Supreme Court who shall hear and determine the matter on the evidence before him or may direct the trial of an issue. R.S.O. 1960, c. 48, s. 8.

Findings
to be set
out in
writing

12.—(1) When the Director of Titles has completed his investigation and any issue referred to a judge is finally disposed of, the Director of Titles shall set out his findings in writing.

(2) A copy of the written findings of the Director of Titles shall be sent by registered mail by the Director of Titles to the applicant and to every person who has filed a claim adverse to or inconsistent with the claim set out in the application.

Copies to be sent to interested parties

(3) Any person aggrieved by the written findings of the Director of Titles may within fifteen days after the date of the mailing of the copies under subsection 2 appeal to a judge of the Supreme Court who may decide the matter on the evidence before him or direct the trial of an issue. R.S.O. 1960, c. 48, s. 9 (1-3).

Appeal

(4) Notice of an appeal under this section shall be served upon the Director of Titles within the period of fifteen days mentioned in subsection 3, and, when that period has elapsed and no notice of appeal has been served upon the Director of Titles, or if an appeal has been taken and disposed of, the Director of Titles may issue a certificate of title or dismiss the application, as the case may be. 1961-62, c. 13, s. 4.

Disposition of application

(5) A certificate of title shall bear the signature and seal of the Director of Titles. R.S.O. 1960, c. 48, s. 9 (5).

Signature and seal

13. Where the Director of Titles is able to give a certificate of title to only part of the land mentioned in the application, the application may be amended accordingly. R.S.O. 1960, c. 48, s. 10.

Certificate to part of land

14. The Director of Titles may order an applicant or any person who has filed a claim adverse to or inconsistent with the claim set out in the application to pay the costs or part of the costs of any proceedings before him or investigations by him and may direct that the same be taxed by the taxing officer of the Supreme Court having jurisdiction where the land is situate. R.S.O. 1960, c. 48, s. 11.

Director may make order as to costs

15. A certificate of title shall be registered by the Director of Titles in the registry office of the registry division in which the land is situate. R.S.O. 1960, c. 48, s. 12.

Registration of certificate

16. Upon registration under section 15, a certificate of title is conclusive as of the day, hour and minute named therein that the title of the owner of the land described therein is absolute and indefeasible as regards the Crown and all persons whomsoever, subject only to the exceptions, limitations, qualifications, reservations and conditions, covenants, restrictions, charges, mortgages, liens and other encumbrances mentioned therein, and is conclusive that every application, notice, publication, proceeding and act that ought to have been made, given or done before the making of the certificate has been made, given or done in accordance with this Act. 1961-62, c. 13, s. 5.

Effect of certificate of title

Conditions
precedent
to registra-
tion of plan

17.—(1) No plan of subdivision of land to which this Act applies and that is in a certification area shall be registered unless the title of the owner of the land has been certified under this Act or unless the owner has derived title through a previous owner whose title to the land was certified under this Act not more than five years before the date of registration of the plan. R.S.O. 1960, c. 48, s. 14 (1); 1965, c. 13, s. 2.

Where
subs. 1
not to apply

(2) Subsection 1 does not apply to a plan of subdivision,

- (a) where the land shown thereon is owned by the Crown or by any agency of the Crown;
- (b) where the land shown thereon is owned by The Hydro-Electric Power Commission of Ontario;
- (c) where all the land shown thereon was acquired by expropriation or on account of arrears of taxes by and is owned by a municipal corporation or by a local board as defined in *The Department of Municipal Affairs Act*;
- (d) where the land shown thereon is owned by a board of harbour commissioners;
- (e) prepared under *The Registry Act* and commonly known as a "judge's plan"; or
- (f) that is a subdivision of a plan that was registered before the area in which the land is situate was designated as a certification area in which no land has been sold, or, whether or not land has been sold, the changes to be effected by the resubdivision are, in the opinion of the Director of Titles, of a minor nature. R.S.O. 1960, c. 48, s. 14 (2); 1961-62, c. 13, s. 6 (1).

R.S.O. 1970,
c. 118

R.S.O. 1970,
c. 409

Idem
R.S.O. 1970,
c. 453

(3) Subsection 1 does not apply to,

- (a) a plan of a survey under Part VIII of *The Surveys Act* or a predecessor thereof; or
- (b) a plan of a survey under section 89 or 90 of *The Registry Act* or a predecessor thereof. 1961-62, c. 13, s. 6 (2); 1970, c. 37, s. 2.

Certification
of Titles
Assurance
Fund

18.—(1) An assurance fund, to be known as The Certification of Titles Assurance Fund, shall be formed to compensate persons who may be wrongfully deprived of land or some estate or interest therein by reason of the title to the land being certified under this Act. R.S.O. 1960, c. 48, s. 15 (1); 1961-62, c. 13, s. 7 (1).

Constitution
of fund

(2) In order to constitute such a fund, every applicant shall pay on the making of a certificate of title under this Act, in addition to all other fees, an amount of money equal to one-tenth of 1 per cent of the value of the land described in the certificate.

(3) Where there are buildings on the land, the value of the land shall include the value of the buildings. Buildings

(4) Where the amount calculated under subsection 2 exceeds \$300, the amount payable is \$300. Maximum payment

(5) Where the amount calculated under subsection 2 is less than \$1, the amount payable is \$1. Minimum payment

(6) The value of the land shall be ascertained as of the date of the application by the oath of the applicant. Valuation of land

(7) If the Director of Titles is not satisfied as to the correctness of the value stated by the oath of an applicant, he may require the affidavit in that behalf of a valuator and such affidavit is conclusive. Proof of value

(8) The Director of Titles may require an applicant to indemnify the assurance fund against loss by a bond or covenant to Her Majesty either with or without sureties or by such other security as he considers proper. R.S.O. 1960, c. 48, s. 15 (2-8). Applicant may be required to indemnify fund

(9) The moneys payable under this section shall be paid into the Supreme Court with the privity of the accountant of the court and shall be placed to the credit of an account entitled "The Certification of Titles Assurance Fund Account" and, subject to subsection 10, shall be invested from time to time under the direction of the Finance Committee of the Supreme Court and such of the interest and income derived therefrom shall be credited to the same account as the Finance Committee of the Supreme Court from time to time determines. R.S.O. 1960, c. 48, s. 15 (9); 1961-62, c. 13, s. 7 (2). Money to be paid into court

(10) The moneys in court at the credit of the assurance fund shall on his demand be paid to the Treasurer of Ontario. R.S.O. 1960, c. 48, s. 15 (10). Payment out of fund

19.—(1) Where, by virtue of section 16, a person is deprived of any interest in land, he is entitled to recover what is just by way of compensation out of The Certification of Titles Assurance Fund, so far as it is sufficient for that purpose having reference to other charges thereon, if the application is made within six years from the time of having been so deprived, or in the case of a person under the disability of infancy, mental incompetency or unsoundness of mind, within six years from the date at which the disability ceased. Claim against Fund

(2) Where a claim is made under subsection 1 in respect of land patented as mining land or in respect of land whose chief value is the ores, mines or minerals therein and it appears that the claimant is entitled to compensation, the entire value of the land shall not be taken at a greater sum than twice the amount that was paid for the original grant from the Crown. Mining lands

Application
for payment

(3) A person claiming to be entitled to payment of compensation out of The Certification of Titles Assurance Fund shall apply to the Director of Titles who shall make a recommendation to the Director of Land Registration as to the amount, if any, that should be paid.

Determina-
tion of
payment

(4) The liability of The Certification of Titles Assurance Fund for compensation and the amount of compensation shall, subject to appeal to a judge of a county or district court and from him to the Supreme Court, be determined by the Director of Land Registration, and the costs of the proceedings under this section shall be in the discretion of the Director of Land Registration, the judge or the Supreme Court, as the case may be.

Notice

(5) The Director of Land Registration shall serve notice of his determination under subsection 4 by registered mail on the claimant.

Time for
appeal

(6) Where the Director of Land Registration determines that compensation should be paid, the claimant, if he intends to appeal, shall, within a period of twenty days after the date of mailing of the notice under subsection 5, serve on the Director of Land Registration notice of his intention to appeal, and the Director of Land Registration shall not certify under subsection 7 the amount to the Treasurer of Ontario if a notice of appeal is received within that period or until after the expiry of that period if no notice of appeal is received.

Payment
out of Fund

(7) Subject to subsection 6, the Director of Land Registration shall certify to the Treasurer of Ontario any amount found to be payable under this section and, upon receipt of the certificate of the Director of Land Registration, the Treasurer shall pay the amount to the person entitled thereto.

Liability
for fraud or
misrepresenta-
tion

(8) The Director of Land Registration may, by action in his own name, recover for the benefit of The Certification of Titles Assurance Fund any loss incurred by the Fund as a result of the fraud or misrepresentation of any person. 1970, c. 37, s. 3 (1), *amended*.

Application
of section

(9) This section does not apply in respect of applications for payment of compensation made before the 26th day of June, 1970. 1970, c. 37, s. 3 (2), *amended*.

Where
death or
change of
interest
occurs

20. Proceedings under this Act shall not abate or be suspended by any death or change of interest, but in any such event the Director of Titles may require notice to be given to persons becoming interested, or may make an order for discontinuing, suspending or carrying on the proceedings or otherwise as he considers proper. R.S.O. 1960, c. 48, s. 17.

21. The Lieutenant Governor in Council may make regulations, Regulations

- (a) prescribing the deposit to be made on applications;
 - (b) requiring the payment of fees upon the performance of any official function under this Act and prescribing the amounts thereof;
 - (c) prescribing forms and providing for their use;
 - (d) designating certification areas for the purposes of subsection 1 of section 17;
 - (e) prescribing the powers and duties of title examiners under this Act;
 - (f) prescribing a code of standards and procedures for surveys made for the purposes of this Act;
 - (g) prescribing administrative procedures for the purposes of this Act;
 - (h) prescribing the procedures to be followed by registrars of deeds with respect to matters under this Act;
 - (i) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1960, c. 48, s. 18; 1961-62, c. 13, s. 8.
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